



# Excise Tax Advisory

Excise Tax Advisories (ETA) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. ETAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

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## ROAD CONSTRUCTION UNDER FEDERAL TIMBER PURCHASE AGREEMENTS

Issued March 21, 1973

*Repealed June 30, 2000*

What are the tax liabilities where roads are constructed under the terms of federal timber purchase agreements?

First, where the timber purchase agreement does not contain a separately stated allowance for road construction, the rules under Peshastin Lumber & Box, Inc. v. State, 61 Wn. 2d 413, govern. The state is prohibited from asserting the business and occupation tax. Under these same circumstances, the use tax is not due on federally owned materials such as crushed rock, rip rap, log stringers, and other native materials installed in the roads by the timber buyer. The court held that the timber buyer is not a "public road contractor" and is therefore not a "consumer" under the law. However, purchases of materials by a timber buyer under these circumstances are subject to the retail sales tax. Such purchases are retail transactions under RCW 82.04.050 since the materials are installed as improvements to realty and are, therefore, not purchased for resale as tangible personal property in the regular course of the contractor's business.

Second, where the road construction is subcontracted, the subcontractor is subject to the business and occupation tax under the Public Road Construction classification on the gross contract price and is also liable for sales or use tax upon all materials either purchased or produced by the contractor.

Third, where the timber purchase agreement contains a separately stated allowance for road construction, the tax application is the same as applied to public road contractors in general, viz., the business and occupation tax under the Public Road Construction classification is due on the full amount of the road building allowance with sales or use tax due on all materials either purchased or produced by the contractor.

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